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The Relationship of the Lawyer to the People

AN ADDRESS
BEFORE THE TWENTY-FIFTH ANNUAL
CONVENTION OF THE

Washington
State Bar Association

SEATTLE
AUGUST 7-8, 1913

BY
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TACOMA, WASH.

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THE RELATIONSHIP OF THE LAWYER TO THE PEOPLE. LEADERSHIP THE DUTY OF THE TIMES.

RT. REV. FREDERIC W. KEATOR, BISHOP OF OLYMPIA.

In a recent number of one of our leading magazines there was a notable and interesting article from the pen of a distinguished member of the medical profession, entitled "Lawyer and Physician—a Contrast." The opening sentences of the article were these: "Every lawyer when young should be apprenticed to some good physician and should return to him regularly through life. Then we might hope that from the neighboring profession of healing there might enter into him a spirit never to be wholly quenched by all the deadening influences of his work."

It would be presumptuous to assume that in asking me to address this Association of Lawyers, your committee, mindful of "the present distress" had the notion that, the legal profession being already past the help of doctors, it might be timely to claim the "benefit of clergy"; but I think I may fairly assume that being cognizant of the fact that I was trained for the Bar, was admitted to practice law, for a time engaged in that practice, and then through force of circumstances, unnecessary to state here, was persuaded to abandon the practice and take up preaching, your committee felt that it might be worth while to indulge in an innovation and give a little place on your program to one who having still, in some measure, your point of view, might also be able to look upon life and the various movements which are going on from a somewhat different angle.

It is my fervent desire and will be my earnest aim to justify the decision of your committee. If I shall fail to do so, it will be competent for any one of you, at any time, to require me to show cause why I should be allowed to proceed further.

In the invitation which came to me all unexpectedly, the subject suggested was "The Relation of the Lawyer to the Public." Advised at the same time, however, that this was only a suggestion, it seems better to limit what I shall have to say to what we may regard as a particular phase of it, and this even at some risk of only heightening the contrast between preaching and practice. As bearing, then, upon the general subject of the relation of the lawyer to the people, I purpose to speak particularly of "Leadership—the Real Need of the Times."

If it shall appear that my special aim is to bring home this need to you lawyers, it is only because through your courtesy I am speaking to you today, and not because I think it applies more especially to you than to the members of the other learned profession, or than to all good men and true in every walk and calling in life. The fact is, we are all bound together in relationships and responsibilities which no differences or specializations can obliterate or destroy. The duty owed

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to society at large is a duty common to all members of society. We only differ in the ways and means through which that duty is fulfilled and discharged.

It is one of the complacencies of history, I take it, that every age is apt to regard itself as a critical time—an age of transition. We have all of us lived long enough to have heard this claim for our own time made over and over again, and looking far back beyond our own times to those we used to read about when we were studying the old classics, I doubt not many will recall the old familiar words, "*Tempora mutantur et mutamur in illis.*" The fact is, this description of the times was true in the long ago, has been true ever since; is true now and will continue to be true with an ever growing and expanding meaning just because our knowledge of the truth is always growing and expanding.

But however we may compare or contrast the time in which we are living with other times, every thinking man is bound to acknowledge that the changes now going on around us are different in quality if not in quantity from those which any other times, at least within our experience, have witnessed. There is a widespread unrest. There is a constantly growing demand for change. There is an over-abundance of criticism everywhere involving pretty much everybody and everything. In short, it would seem as though society generally were undertaking the task of looking itself over, making careful examination of the very foundations, taking stock of the materials which have entered into its upbuilding; questioning all its old practice, customs, methods and motives, and all this as though it were getting ready to undertake a reconstruction.

Try as we may to quiet our fears with the reflection that this sort of thing has always been going on, or at least has happened over and over again, we cannot altogether get away from the fact that while this is so, it is so now with a difference.

Two of our leading professions, yours and mine, if I may venture to class them together, are being forced to trial. So far as the Ministry is concerned the indictment charges that it is very much out of touch with the life of the present day, and while I, as a humble representative of it, am not willing to plead guilty, I am bound to realize that there is a lot of evidence to be overcome. And as for the charge against the lawyers—well, perhaps it has been expressed rather succinctly, not to say wittily, in the saying, "Society always was prejudiced against the lawyers, and now finds its prejudice justified."

The ground of this prejudice, if I mistake not, is generally found in the ultra-conservatism which is supposed to characterize the legal profession. Lawyers, as a class, it is said, are so tied down by precedents, and bound tight by technicalities, that they cannot get themselves free and advance with the times. This is the real secret of that "deadening influence" spoken of by the learned author of the "Contrast Between Lawyers and Physicians," from which I quoted in beginning, whose

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sure cure he would find in sending every young lawyer to a good physician, to the end that in his presence and through the power of his example, he might learn to look forward, by forgetting to look backward. For in his opinion lawyers and physicians really face in opposite directions, and while the one profession is constantly advancing, nay more is leading the advance, the other is so constantly holding back that "the inertia becomes almost our despair." Indeed, so marked has the contrast become that he can only express it by saying that, "Of two Rip Van Winkles awakening today, the physician would find his old methods as rust-eaten and useless as his instruments; the lawyer after a few hours with new statutes would feel at home in any of our courts."

Personally, I have no doubt but that there is another side to all this, as many of you lawyers could tell out of your own experience with this same medical profession—experience gained not only in their offices or surgeries, but in many a courtroom where you have seen them and known them as expert witnesses; and I recall, too, that something like the millennium will come only when according to Dr. Oliver Wendell Holmes, "Doctors shall give what they would take," as well as "Lawyers take what they would give."

But to come back to the subject of conservatism, especially in its bearing upon the changes which the times are demanding—out of which springs and grows the prejudice against lawyers—it is certainly worth while to insist that if it has a bad side, it has also a good side, and to insist further that the real need of the times is so to correct and improve the one as not to maim or destroy the other. The whole history of society, it has been truly said, has been the history of the struggle for law, the establishment of those relationships in which men, both individually and collectively, might live their lives and carry on their work, protecting and insuring their best interests, both private and public. For as one has well stated it, "the law is simply that part of the established thought of men which has been accorded general acceptance, backed and sanctioned by the authority of a regularly constituted government." It is therefore obvious that the conservative habit is natural to the law and to whomsoever and whatsoever has to do with the law. It is based upon experience which is always in the past, and in the very nature of things the lawyer cannot rush after and take up with every new discovery of natural science which is the basis of the boasted leadership and progressiveness of the men of the medical profession.

Even the learned author of the "Contrast," to which reference has been made, appreciates this marked difference between the two professions in this regard, for he admits that "the conservatism of the lawyer comes in part from the contagion of the law. For the law represents the stability, the habit of our social life, as against creative, reformatory energy. We must not deny the value of this trait. His

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is the virtue—and the vice—that lies in habit. Here, as with each of us personally, habit is indispensable even though it calls forth no enthusiasm. Though it does not drive us forward and too often binds, yet we should not advance without it, for the gain once made would slip away." It is not the conservatism of the law or the lawyer, *per se*, which is at fault. If wrong comes from it, it can only be because the conservative habit is pushed too far, or is used for wrong ends.

In spite of all the prejudice against the profession, the people of this nation at least should not forget, indeed they should never be allowed to forget, the debt which the American people owe to American lawyers. It was they who founded this nation, and in large part it is they who have governed and guided it. For the first hundred years of our national history, so great was the predominance of lawyers in the control of political affairs that it has been aptly called "unprecedented," since "no other great people either in classic, medieval or modern times has ever allowed such a professional monopoly of governmental functions."

The explanation of it seems clear enough. It was because this nation was founded upon law, and from the first was destined to be a government by law. Because its political status was imbedded in a written constitution, every question of policy sooner or later became a question of law. It has been said that up to the time of the Civil War "the very platform of political parties centered on questions of legal interpretation" and lawyers became of very necessity the guiding statesmen. Furthermore, "the importance of lawyers as legislators and executives in the actual work of American government has been an indirect consequence of the peculiar function of the Supreme Court in the American political system." As one reads the earlier history of this nation and recalls the great names, so closely identified with the establishing of great principles and with the shaping of great policies, he cannot help exclaiming, "there were giants in those days!"

But, on the other hand, when we review the entire history of this nation down to our own times, may we not, nay, must we not distinguish different periods or stages in that history? Classing as one period the time down to the Civil War, we may call it the political period. During that period the nation was, as it were, finding itself, and the characteristic of it was government by law, which really meant by lawyers, since they were foremost in shaping and guiding its policies. It was well that it should have been so, for no other system or method could have been better suited to this country of ours, as we know it and love it, in its young and formative years. And because the foundations were fixed so deep and strong, and the beginning of its walls so well and truly laid, we may indulge the hope that future generations shall long continue to share the blessings and the benefits of it all.

After the Civil War we entered upon a new period which may be

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called the economic period. Instead of questions of government, questions of business came to the front. The vast domain of the country began to be opened up for settlement, and its vast natural resources began to be opened up for exploitation and development. All these lines of development, ever extending and widening, soon began to be so crossed and interlaced, that in fact a new nation was created and came into being. With all the changes which followed in the train none were more marked or more significant than those which affected the individual. The individual was no longer equal to the task of dealing with the mighty forces at play, the vast opportunities constantly opening up, and so there came to pass the combination of individuals into the corporation, created by law and endowed with all the powers and privileges of an individual, and in addition with some which the individual did not possess, *e. g.* a certain perpetuity of existence and power.

Through all these changes the constant effort was to make the old law fit the new facts and conditions, an effort which while oftentimes clever enough apparently was not altogether satisfactory, at least to the people as a whole who sometimes felt, and I think we must in all fairness say justly felt, that somehow the advantage was all in favor of the few and against the many.

But even this combination of individuals into corporations was not sufficient to meet the growing needs of "big business," and so we began to witness the further combination of corporations—and the trust was the new creation. This in its turn was under the form of law, but just as this combination was greater and mightier, so the problem of making the law square with the new facts and conditions were more complex and vastly more difficult even if they developed in those who came to be known as the "corporation lawyers," the wit and the skill to tread the mazes of all the complexity, and find the way out of all the difficulties.

All this is familiar enough to be commonplace, but I ask you to bear patiently with me a little longer on this point, as I endeavor to discover the effect of all this on the legal profession, as seen by the people at least, if not realized by the profession itself.

Would it be putting it too strongly, if I make bold to say that this effect may be expressed shortly in this wise—that the law has ceased to be a profession—and has become a business? Perhaps my own experience is utterly insufficient, not to say irrelevant and immaterial, as evidence on this point, yet I cannot but recall the strange disillusionment which came over me when after a careful and painstaking course of study in the law, pursued with abundant diligence and increasing admiration, I entered upon the practice of what I confidently believed would be my life profession, only to find that it was not a profession at all, but only a business, and a pretty poor one at that. And my perplexity was not lessened, when one who had had sufficient experience

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to have taken him quite beyond the drudgery which pertains to the mere novice, said to me in tones which expressed his very soul: "Yes, the law is a beautiful theory—but it's a —— poor practice."

Whether any of you have had a like experience, I know not; and whether our individual experience would prove it or not, of this I am persuaded, that the people generally have taken judicial notice of the fact, that lawyers no longer practice law in the general interests of society, as guardians of the public peace, protectors of the rights and liberties of the people, and guides for the general good. Rather they see them as promoters of strife, defenders of special privileges, and counselors for private interests. Whether we like it or not, I venture to say that if the question were put up to the people generally, "Who is the most distrusted man in society today?" the great majority of the answers would be "the corporation lawyer," and this just because they regard him as in league with interests which they, rightly or wrongly, regard as opposed to their interests, and as wholly given over to selfish aims and methods, no matter what his private character may be.

In an address before the American Bar Association some two or three years since, Woodrow Wilson, now president of the United States, said of the effect of the modern business system on the legal profession: "A new type of lawyer has been created, for he has been sucked into the maelstrom of the new business system. He no longer practices law, nor handles the general interests of society. He is now a specialist. So society has lost something very serious to lose in an age when society depends more than ever on the lawyers, and on the courts, for harmony and co-ordination of its parts. In being drawn into business, instead of standing outside of it, in becoming identified with particular interests, instead of advising all interests, the lawyer is looked at askance, and is no longer regarded as a mediator of progress. Society always was prejudiced against them and is now finding its prejudice justified." And there you are!

It is not my purpose to indulge in a discussion of modern business, its methods and its results. I would not consider myself competent to do so, even had I the inclination. What I desire to discuss next is the new era upon whose threshold we are already standing, which may be called the "social era."

There is no use in trying to disguise the fact, and still more is it useless to raise the cries of "Stand pat," "Let well enough alone," "We don't need any more law, but simply to enforce what we already have." A new and mighty movement has already begun, and we have only to listen to hear its rustlings. We see it in its beginnings; no man knows how long it shall continue or how far it shall go. Its unquestioned aim is the reconstruction of society.

Concerning its present temper, one has summed it all up in these words, "There are certain things we must do. Our life as a nation

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must be rectified in certain all-important particulars. If there be no law for the change it must be found or made. We will not be argued into impotency by lawyers. We are not interested in the structure of our government so much as in the exigencies of our life. Life does not center now upon questions of governmental structure, but upon economic questions, upon questions of the very structure and operation of society, of which government is only the instrument."

If we want to know whether this summary is true to the facts, all we have to do is to notice and to read the many strong books which are being issued nowadays, and which many people are reading and pondering over. It is no longer merely a matter of the muck-raking magazine, or the yellow journal. The concluding phrase of this summing up which speaks of government as the instrument of society, is one which should appeal to us as full of hope and encouragement. For one, I am optimistic enough to believe that this new movement is one which is based upon the love of law, and is prompted by a real desire to bring about its reforms in an orderly, peaceful and righteous manner. The majesty of the law has not lost its hold upon the reverence and regard of the people. All they are asking so far is that the law shall be so formulated and administered that it may continue to hold their respect. They do not ask that anything shall be torn down which has been built up at such cost, but that enough of it shall be so changed and altered that the law may be able to reach the individual and rehabilitate him, by restoring him to his inalienable right—the right to live his life up to the best of which he is capable. And what is this but the establishment of justice in its best and truest meaning?

And this brings me in conclusion to what I hold to be the great opportunity of the legal profession, and of lawyers individually, in the present crisis, which is to reclaim and regain their old leadership. Gradually, but none the less certainly, the interest of the people in those things which concern the deepest interests of their social welfare is being aroused, and more and greater are the demands which are made for the developing or the safeguarding of those interests. In all these, many and great are the problems which are being forced to the front. Never was there greater need for safe and yet sympathetic guides, such as well learned and well trained lawyers might be; lawyers who are statesmen, not in the old political sense, as interested chiefly in the structure of government, but statesmen in the new social sense; men who are able to think in terms of society, and to mediate between the manifold and various interests; men who are devoted to the cause of justice, and take seriously their calling as officers of justice; men capable of accommodating right to right, but who are also capable of making and keeping the law clear regarding the responsibilities which inevitably go along with every right and every privilege.

Some guides the people must have or they are simply going to stumble blindly on trying first one experiment and then another. Re-

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forms to be safe and permanent must be legal reforms. Nothing is ever settled until it is settled right—and right in this nation means in accordance with law, which in its turn is based upon and has grown out of the experience of the past, and also conserves all that is best and most sacred in our history.

Perhaps it is just here there lies the trouble with much of our present reform legislation which few, I take it, regard as satisfactory. It is not enough to write a new law on the statute book. If it is really to accomplish anything permanent it must be based upon something more durable than a sudden passion or a passing whim or fad. For the law is always only a means to an end, and not the end itself. Like the government, it is only an instrument for the well-being of society, which will only be really and permanently effective when wisely and conscientiously used.

There is, then, a real demand, as well as a pressing need, for the return of lawyers to the former prestige of leadership, with the added knowledge and experience which their association with the methods and policies of business in recent years has afforded them. The very fact that they have gained this knowledge and experience by direct association with business, will make them the more capable of correcting the wrongs and abuses which have gradually grown up with and out of modern business conditions. In that event the very thing which has brought them into discredit with the people, will be the means of restoring them to a position of honor and confidence among the people.

Gentlemen of the Bar Association! If in demonstrating the fact that leadership is the supreme duty of the hour, I have emphasized that duty as belonging chiefly to you, it is not, as I said in beginning, it is not because I think it belongs only to you. All who share in the privileges of society must share also the duties and responsibilities which go with these privileges. The duty of leadership in the time in which we are living seems to rest chiefly and most naturally upon you, for the questions and problems of the time are so intimately bound up with the right establishment and right administration of the law. But a like duty rests upon men of learning, men of culture, men of special training in all the professions and callings of life. It is the old principle of *noblesse oblige* come to life again. Every advantage gained by training, every ability gained by learning, must be used not for selfish good, but for the good of all.

These are times which call for intelligent interest, unselfish sympathy and withal resolute courage—the courage born of optimism—not of the silly sort which refuses to believe a thing even when it's there, but the kind which bravely faces the facts and then sets itself to deal with the facts.

We all know there are forces even now at work which are avowedly subversive of all law—even to the extent of pulling down the old flag all radiant with the glory of victory after many a hard-fought battle,

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of peace after strife, and of brotherhood after alienation and estrangement—running up in its stead the red banner of anarchy and hatred. Even these forces must be recognized and dealt with, not with violence, but by pointing out and leading in a better way.

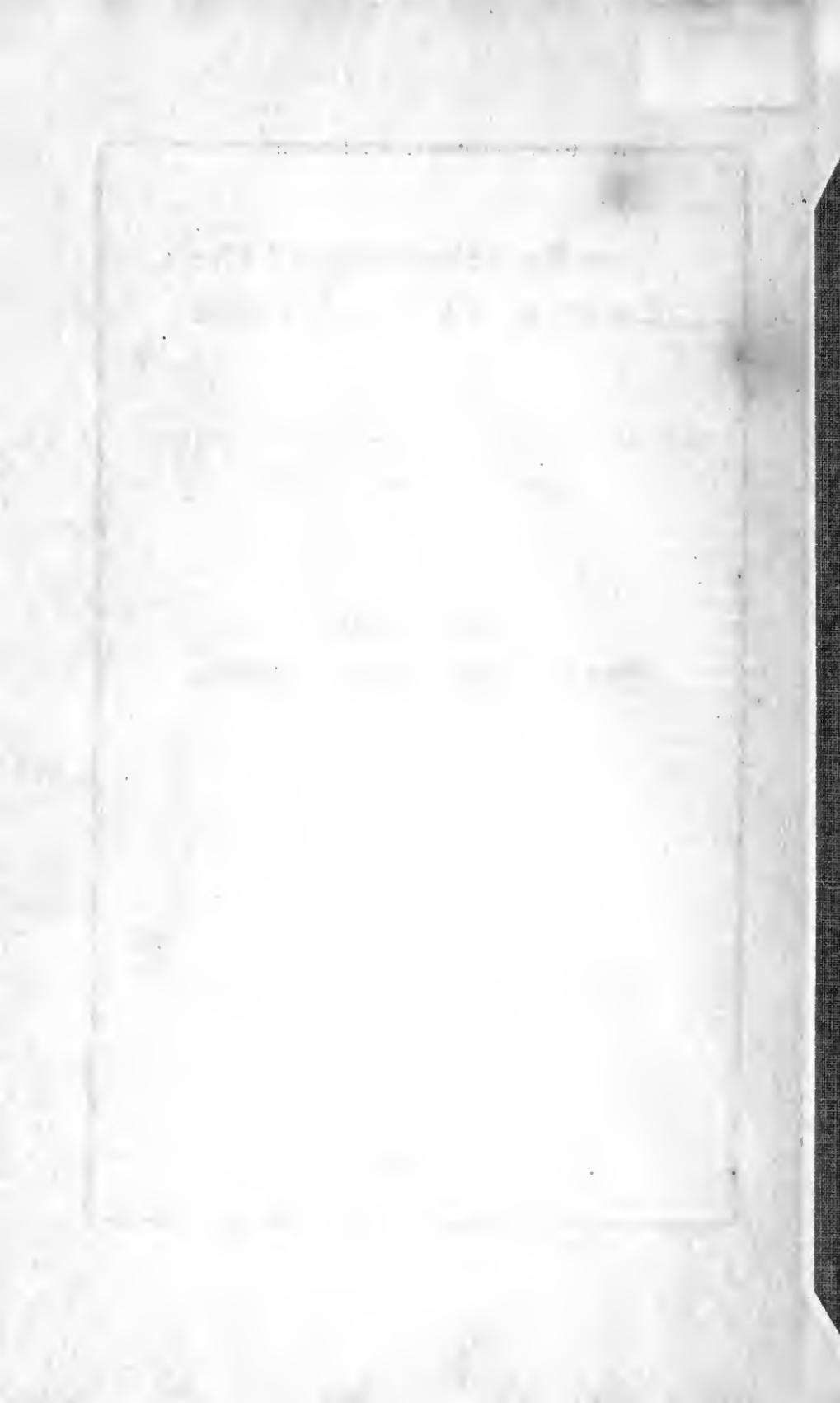
Still further we need to face the fact of a general unrest, and with patient and intelligent interest endeavor to discover the causes, to the end that the causes may be removed.

If the new era which is already upon us is demanding a reconstruction, it is possible to hear and heed the demand in such wise that it shall be indeed a real reconstruction and not a revolution. But if such it is to be, it will be because good temper, intelligent interest, sober counsel, and earnest co-operation of all true and trained men shall unite to furnish the strong leadership which the solution of our problem and the advancement of our manifest destiny require.

A poem of James Russell Lowell, called "The Present Crisis," bears the date 1844. Many of the lines are still suited to the present crisis which is upon us in this year of grace, 1913. Let me sum up the message which this address is meant to bring to you in the concluding verses:

"New occasions teach new duties; Time makes ancient good uncouth;
They must upward still, and onward, who would keep abreast of Truth;
Lo, before us gleams her campfires! We ourselves must Pilgrims be,
Launch our Mayflower, and steer boldly through the desperate winter sea,

Nor attempt the Future's portal with the Past's blood-rusted key."



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